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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,571	03/31/2004	Pawel Kuzan	14661	4335

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EXAMINER

GURZO, PAUL M

ART UNIT PAPER NUMBER

2881

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,571	<b>Applicant(s)</b> KUZAN ET AL.	
	<b>Examiner</b> Paul Gurzo	<b>Art Unit</b> 2881	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 12-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 5-11 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: there is no antecedent basis for "waste tube" in line 2. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 12-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeWinter et al. (6,866,461).

Regarding claim 1, 461 teaches an automatic sample loader for use in association with a mass spectrometer (13) and at least one vial containing a sample, the loader comprising a vial

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block (11) having at least one vial cavity, each vial cavity adapted to receive a vial, an insertion head (20) adapted to be sealingly engageable in the vial cavity, an insertion tube (the combination of 16 and 26) operably connected to the mass spectrometer through the insertion head such that the tube extends into the vial when the insertion head is sealingly engaged in the vial cavity, and a means (14) for moving the insertion head relative to the vial block from an engaged position to a disengaged position (col. 6, line 38 - col. 8, line 20 and Fig. 1A-1C). 461 does not explicitly teach a means for pushing the sample out of the vial. However, it is widely known in the art of mass spectrometry that mass spectrometers are used to detect and analyze samples. Without a sample present in the spectrometer, there would be nothing to analyze. Therefore, the system taught by 461 must include means to remove the sample from the vial to ensure that the desired sample detection and analysis is achieved.

Regarding claims 2-4, 461 teaches a plurality of vial cavities (Fig. 1A) and a means for advancing the vial block (controller 14). Further, Fig. 1A clearly shows movement in two degrees of freedom, and it is obvious that such movement can be achieved in conjunction with a positioning stage because the vial block (11) must be positioned on something to ensure accurate movement. Because the mass spectrometer (13) must analyze the sample inside the vials, it is obvious that there must be some means of opening the vial to ensure that the sample can be analyzed. Once the vial is engaged, it would be impossible to lift the lid to open the vial because a vacuum seal exists in the prior art. Therefore, the lid must be opened prior to engagement to ensure that the seal remains intact.

Regarding claim 12, 461 teaches a method of loading a sample for a mass spectrometer (13) comprising advancing a vial cavity (11) having a vial (12) with a sample therein into a

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predetermined position relative to an insertion head (20), lowering and coupling the insertion head to the vial cavity (by use of controller 14), applying pressure (col. 7, line 54 - col. 8, line 19), and de-coupling the insertion head from the vial cavity (col. 6, line 38 - col. 7, line 25).

Regarding claims 13-14 and 16, 461 teaches applying a buffer (15) to the vial and it is obvious that the buffer (15) will be controlled to add sample based on the contents of the vial (12). Therefore, the controller (14) must know if the vial is empty. Further, Fig. 1A clearly depicts the claimed plurality of vial cavities (12) located on the vial block (11).

#### *Allowable Subject Matter*

Claims 5-11 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of record does not teach or render obvious the combination of the claimed plurality of pressure ports that are connected to the insertion tube or the claimed removing of waste.

#### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brunfeldt et al. (4,879,458)

Ledford (5,037,611)

Degn (6,558,630)

McMurty (6,864,487)


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gurzo whose telephone number is (571) 272-2472. The examiner can normally be reached on M-Fri. 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached at (571) 272-2477. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PMG

  
JOHN R. LEE  
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